IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 30TH JANUARY 2007 / 10TH MAGHA 1928

Crl. MC. No. 1158 of 2004(D)

CC.550/2003 of JUDL. MAGISTRATE OF FIRST CLASS COURT, VARKALA

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PETITIONER: ACCUSED.

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1. P.SUBHASH, S/O.PASUPALAN,
   NARAYANA MANDIRAM, KURAKKANNI, VARKALA,
   THIRUVANANTHAPURAM DISTRICT.

2. N.SAVITHRY, W/O.PASUPALAN, -DO- -DO-

3. S.SUJA, W/O.VIJAYAN, -DO- -DO-

BY ADV. SRI.BLAZE K.JOSE

RESPONDENTS: DEFACTO COMPLAINANT.

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1. THE STATE OF KERALA, REP. BY THE
   PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
   REPRESENTING THE SUB INSPECTOR OF POLICE,
   VARKALA POLICE STATION.

2. ALEXANDER DORRIE, D/O.KLAUS DORRIE,
   SIEDLERSTR 81, 63128- DIEZENBECH - 81,
   GERMANY.

BY ADV. SRI. PUZHAKKARA MUHAMMED, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 30/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R. UDAYABHANU, J

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CRL. M.C. NO. 1158 OF 2004

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Dated this the 30th day of January 2007

O R D E R

The petitioners, who are the accused in C.C. No. 550/2003 in the court of Judicial First Class Magistrate, Varkala, has sought for setting aside the proceedings initiated against them for the offences under Sections 406 and 420 r/w 34 of the Indian Penal Code. The 2nd petitioner who is the mother of the 1st petitioner is an old lady aged 81 years and the 3rd petitioner is the daughter of the 2nd petitioner. The prosecution allegation is that the petitioner induced the 2nd respondent/defacto complainant who is a German citizen to part with Rs. 8 lakhs as part consideration for 22 cents of property belonging to them, the total sale consideration being Rs. 16 lakhs. The amount was received on 30.04.2001 on condition that the petitioner shall obtain permission from the Reserve Bank of India for the defacto complainant who is a foreigner for the intending purchase. Permission was refused by the Reserve Bank of India and the

amount of Rs. 8 lakhs was not returned. It is the case of the petitioner that they had never agreed to fetch the no objection certificate from the Reserve Bank of India. Further it is pointed out that the matter was amicably settled among the parties by executing a cancellation agreement dated 30.01.2002 and on 22.02.2002 the 1st petitioner paid an amount of Rs. 7.5 lakhs received as advance sale consideration. An amount of Rs. 50,000/- was agreed to be waved by the defacto complainant. The amount was paid by way of demand draft for an amount of Rs. 5,00,000/- and Rs. 2.5 lakhs by way of cheque. The copy of the agreement has been produced as Annexure III. The copy of the demand draft is produced as Annexure IV. The petitioners and the defacto complainant had requested the investigating authorities to drop the criminal proceedings. The copy of the above request submitted by the defacto complainant is produced as Annexure V. Despite the same, the petitioners have been charge sheeted.

2. In the circumstances, I find that no purpose will be served by further proceeding with the matter. Although notice was served on the 2nd respondent/defacto complainant there is no appearance. In the circumstances, the proceedings against the petitioners, vide C.C. 550/2003 in the court of Judicial First Class Magistrate, Varkala is herewith quashed.

The Crl. M.C. is allowed accordingly.

K.R. UDAYABHANU, JUDGE.

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